IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 30246 & 30247 of 2003

M/s.Suguna Automobiles,
Represented by its Managing Partner
S.Ponnusamy, No.4,
Dr.Munusamy Garden,
Avinashi, Coimbatore - 641 018. ... Petitioner in both W.Ps

Vs

The Commercial Tax Officer,
P.N.Palayam Circle,
Coimbatore. ... Respondent in both W.Ps

Prayer in W.P.No.30246 of 2003: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent herein in his proceedings in TNGST No.2160283/1999-2000 dated 20.10.2003 and quash the same and direct the respondent herein to refund the excess amount of entry tax of Rs.10,65,822/- to the petitioner herein relating to the Assessment Year 1999-2000.

Prayer in W.P.No.30247 of 2003: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent herein in his proceedings in TNGST No.2160283/1998-1999 dated 20.10.2003 and quash the same and direct the respondent herein to refund the excess amount of entry tax of Rs.11,55,029/- to the petitioner herein relating to the Assessment Year 1998-1999.

For Petitioner : Ms.R.Hemalatha
(In both W.Ps)

For Respondent : Ms.G.Dhanamadhri
(in both W.Ps) Government Advocate

COMMON ORDER

By this common order, both the writ petitions are taken up for final disposal.

2. In these writ petitions, the petitioner has challenged order of the respondent both dated 20.10.2003 rejecting the request of the petitioner for refund of the difference in the Entry Tax paid by the petitioner under the provision of the Tamil Nadu Tax on Entry of Motor Vehicles in to Local Areas Act, 1990 [for brevity referred to as TN Entry Tax Act, 1990] and Tamil Nadu General Sales Tax Act [for brevity referred to as TNGST Act, 1959].

3. The petitioner is a dealer of two wheeler and had paid Entry Tax for the following assessment years:

Assessment Year	Date of Order	Purchase Value Rs.	Rate of Entry Tax (%)	Entry Tax Paid and Assessed Rs.
1998-1999	31.03.2000	17,25,30,376	9	1,55,27,733
1999-2000	09.03.2001	18,50,00,812 9	9	1,66,50,073

Since the Entry Tax was to be paid at 9% and the said tax which was available for adjustment in terms of Section 4 of the Entry Tax Act, 1990 towards tax liability under TNGST Act, 1959, it resulted in excess collection under the former Act. The petitioner thus filed refund claims. The refund claims came to be rejected by the respondent vide impugned communications.

4. The relevant portion of the impugned communications rejecting the refund claim almost proceeded on a similar reasonings. They are based on a reading of Section 11 of the Entry Tax Act, 1990 which reads as under:-

> "11.Refund of Tax - The assessing authority shall refund to a person the amount of tax and penalty, if any, paid by such person in excess of the amount due from him. The refund may be either by cash payment or, at the option of the person, by deduction of such excess from the amount of tax and penalty, if any, due from that person in respect of any other period:
>
> Provided that the assessing authority shall first apply such excess towards the recovery of any amount due in respect of which a notice under

sub-section (4) of Section 10 has been issued and shall then refund the balance, if any.”

5. It is submitted that the decision is no longer res-integra and is covered by plethora decisions of this Court in the following cases:-

(i) State of Tamil Nadu Vs Ganesh Automobiles, (2004) 134 STC 272,

(ii) Khivraj Motors Limited Vs Assistant Commissioner (CT), Fast Track Assessment Circle III, Chennai and another, 139 STC 233

(iii) M/s Coimbatore Auto Garage (p) Ltd., Vs Commercial Tax Officer, Coimbatore, (2011) 45 VST 69 (Mad) order dated 20.03.2003 in W.P.Nos.9017 and 9018 of 2003.

It is therefore submitted that the Hon'ble Supreme Court has dismissed the appeals against the decision rendered in State of Tamil Nadu Vs Ganesh Automobiles, (2004) 134 STC 272 and in M/s Coimbatore Auto Garage (p) Ltd., Vs Commercial Tax Officer, Coimbatore, (2011) 45 VST 69 (Mad) in W.P.Nos.9017 and 9018 of 2003 vide order dated 06.08.2004 and 09.12.2016 in SPL (Civil) No.4612 of 2004 and in SPL (Civil) No.9028 to 9030 of 2011 respectively.

6. Per Contra, the learned counsel for the respondent submitted that the issue is still pending before the Hon'ble Division Bench and that a learned single Judge of this Court has referred the matter to the Division Bench in few cases sand therefore the final outcome in the pending cases before the Hon'ble Division Bench will have bearing on the decision to be taken in the present writ petition. It is further submitted by the learned counsel for the respondent that both Section 4 and Section 11 of the TN Entry Tax Act, 1990 are stand alone provisions and operate in a different field. It is submitted that while under Section 4 of the TN Entry Tax Act, there is a statutory mechanism for adjustment of the Entry Tax paid under Section 3 of the Entry Tax Act, against tax liability under the TNGST Act, 1959 and the Tamil Nadu Additional Sales Tax Act, 1970, there is no corresponding provisions for refund of the amount lying in excess after such adjustments. It is further submitted that Section 11 of the said Act deals with a case where there is excess amount of tax or penalty is paid under the provisions of the TN Entry Tax Act, 1990.

7. It is submitted that the entry tax that was paid by the petitioner had not paid excess tax under Section 3 of the TN Entry Tax Act, 1990 and therefore the machinery for refund under Section 11 of the said Act cannot be pressed into service. It is submitted that merely because there is an excess remaining

unadjusted due to the differences in the rate of tax under TNGST Act, 1959, at 8% Entry Tax and at 8% TNGST ipso-facto will not mean that the petitioner has paid tax in excess under Section 3 of the Entry Tax Act, 1990 so as to warrant a refund under Section 11 of the Entry Tax Act, 1990.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent and I have perused the impugned order and the case laws cited by the petitioner and the respondent.

9. The arguments advanced by the learned counsel for the respondent appears to be a reasonable interpretation and consistent with the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles in to Local Areas Act, 1990, which has been referred to as TN Entry Tax Act, 1990 in this order.

10. In my view, Section 11 of the Entry Tax Act cannot be pressed in to service for granting refund. However, this issue has answered against the respondent by the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu Vs Ganesh Automobiles, (2004) 134 STC 272 and the Commercial Tax Officer Vs M/s.Coimabatore Auto Carriage (P) Ltd., (2011) 45 VST 69.

11. In Paragraph 7 of the decision of the Hon'ble Division Bench of this Court in State of Tamil Nadu Vs Ganesh Automobiles, (2004) 134 STC 272, has held as follows:-

> 7. The respondents admit that there is availability of excess amount, but, they contend that there is no provision for refund under the Act. The above contention of the respondents is not correct, since Section 11 of the Act provides for refund of tax under the Act in question. The learned single Judge has also pointed out the above section and relied on it. As per Section 11, the assessing authority shall refund to the person the amount of tax and penalty if any paid by such person in excess of the amount due from him. Section 10 of the Act provides for payment of entry tax and Section 11 of the Act provides for refund of excess tax paid. In the present case, after adjusting the tax payable by the petitioner under the Tamil Nadu General Sales Tax Act in the entry tax paid, there is availability of excess amount of tax paid by the petitioner and as such, the petitioner is entitled for refund of such excess amount. In view of some dispute with regard to the amount of tax payable by the petitioner under the Tamil Nadu General Sales

Tax Act, the learned single Judge has directed the second respondent to hold an enquiry in this regard and refund the balance if any. We agree with the reasonings of the learned single Judge and there are no merits in the appeal.

This view was also followed in M/s.Coimbatore Auto Garage (P) Ltd., Coimbatore Vs The Commercial Tax Officer, Coimbatore, (2011) 45 VST 69 (MAD) for a different assessment.

12. Though the arguments advanced by the learned counsel for the respondent based on the decision of the learned single Judge in Khivraj Motors Limited Vs Assistant Commissioner (CT), Fast Track Assessment Circle III, Chennai and another, 139 STC 233 appears to be attractive and correct, I have to state that the said decision stands negated in the two decisions cited above and the decision of the Hon'ble Division Bench in Khivraj Motors Limited Vs Assistant Commissioner (CT), Fast Track Assessment Circle III, Chennai and another, 139 STC 233 vide order dated 04.02.2010 in W.A.No.3201 to 3204 of 2004.

13. That apart, the respondent have not successfully challenged the three decisions of the Hon'ble Division Bench of this Court cited above before the Hon'ble Supreme Court and allowed them to be dismissed on the ground of limitation.

14. In the light of the above reasonings and the observations, I am inclined to allow these writ petitions with a direction to the respondent to refund the excess amount within a period of 3 months from the date of receipt of a copy of this order.

15. These writ petitions stand disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
1. The Commercial Tax Officer,
P.N.Palayam Circle,
Coimbatore.

+ CC to Special Government Pleader(Taxes), Sr.No.346

PA(CO)
SM/19/02/2021

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